

PART III: COMPLAINTS AND REPORTS

TABLE OF CONTENTS

A.	24-Hour Hotline & Receiving Complaints and Reports	3
B.	Persons Who May Make a Complaint or Report	3
1.0	Mandated Reporters	4
1.1	Who Are Mandated Reporters	4
1.2	Mandated Reporter May Make Report to that Person's Supervisor	5
1.3	Mandated Reporter Must Disclose All Relevant Information Even if Not The Complainant	5
1.4	Failure by Mandated Reporter to Report Abuse or Neglect	6
1.5	Physicians Diagnosing Venereal Disease	6
2.0	Other Persons May Make a Report of Alleged Child Abuse or Neglect	6
3.0	Complaints and Reports May be Made Anonymously	7
4.0	Issues Related to Reporting	7
4.1	Immunity from Liability for Persons Making a Report	7
4.2	Protecting the Identity of the Reporter or Complainant	7
C.	Actions Upon Receipt of Complaint or Report	8
1.0	Statutory Authorities and Responsibilities	8
2.0	Document Receipt of Complaint or Report in Automated Data System	8
3.0	The Local Department Must Record All Complaints & Reports in Writing	8
3.1	New Allegations in an Existing Family Assessment or Investigation	8
D.	Determine Validity of Complaint or Report	9
1.0	Definition of Valid Complaint or Report	9
2.0	Determine Whether the Complaint or Report Is Valid	9
2.1	Question 1: Is the Alleged Victim Child Under Eighteen Years of Age?	9
2.1.1	Emancipated Minor	10
2.1.2	Alleged Victim Child is Married	10
2.2	Question 2: Is the Alleged Abuser or Neglector a Caretaker?	11
2.3	Question 3: Is Abuse or Neglect Alleged to Have Occurred?	13
2.3.1	General Factors to Consider When Determining if Abuse or Neglect Definition has Been Met	13
2.3.2	Establish Injury or Threat of an Injury	13
2.3.3	Establish Nexus Between Caretaker's Actions or Inaction and the Injury or Threatened Injury to the Child	13
2.3.4	"Other Than Accidental Means"	13
2.3.5	Determine if Medical Neglect Definition Has Been Met	14
2.3.6	Child Under Alternative Treatment	17
2.3.7	Medical Neglect of Infants with Life-Threatening Conditions	18
2.4	Question 4: Does the Local Department Have Jurisdiction to Conduct the Family Assessment or Investigation?	20
2.4.1	Lack of Jurisdiction Not Sufficient to Invalidate Complaint or Report	21
2.4.2	The Local Department First Receiving the Complaint or Report Must Ensure Complaint or Report, if Valid, Receives a Response	21
2.4.3	Transfer Jurisdiction of Complaint to Another Local Department	22
2.4.4	Responsibilities of Local Department Receiving the Complaint	22
2.4.5	Assistance Between Local Departments of Jurisdiction	22
2.4.6	The Appearance of a Conflict of Interest	24
2.4.7	Family Assessments or Investigations Involving Employees of Local Departments	25
2.4.8	Local Department Cannot Assume Jurisdiction if Abuse or Neglect Occurred in Another State and the Alleged Abuser Does not Reside in Virginia	25
3.0	Invalid Report or Complaint	27
3.1	Additional Information for Screening Reports of Abuse/Neglect Regarding Public School Personnel	27

PART III: COMPLAINTS AND REPORTS

4.0	Required Notifications if Report or Complaint is Invalid	27
4.1	Notify Complainant	27
4.1.1	Invalid Complaint Involving Child Care Facility	27
4.1.2	Non-Caretaker Sexual Abuse: Information to be Provided to Reporter or Complainant	28
4.2	Notify Law Enforcement of Non-Caretaker Sexual Abuse	28
4.2.1	Information to be Provided to Law Enforcement in Non Caretaker Sexual Abuse.....	28
E.	Certain Complaints and Reports Must Be Reported to the Commonwealth Attorney and Others	28
1.0	Report Certain Cases of Suspected Child Abuse or Neglect	28
1.1	The Death of a Child	29
1.2	An Injury or Threatened Injury to a Child Involving a Felony or Class I Misdemeanor	29
1.3	Any Sexual Abuse, Suspected Sexual Abuse or Other Sexual Offense Involving a Child	29
1.4	Any Abduction of a Child	29
1.5	Any Felony or Class 1 Misdemeanor Drug Offense Involving a Child	30
1.6	Contributing to the Delinquency of a Minor	30
1.7	Information to be Provided to Commonwealth's Attorney and Law- Enforcement Agency	30
1.8	Other Criminal Acts Related to Child Abuse or Neglect.....	30
2.0	Report the Death of a Child	30
3.0	Memoranda of Understanding with Law Enforcement and Commonwealth's Attorney	31
F.	Screen Valid Complaints and Reports for Priority	31
1.0	The Immediate Danger to the Child	32
2.0	The Severity of the Type of Abuse or Neglect Alleged	33
3.0	The Age or Vulnerability of the Child.....	33
4.0	The Circumstances Surrounding the Alleged Abuse or Neglect	34
5.0	The Physical and Mental Condition of the Child	34
6.0	Complaints Made by Mandated Reporters	35
G.	Determine the Appropriate CPS Response: Family Assessment or Investigation.....	35
1.0	Make the Response Track Decision	36

PART III: COMPLAINTS AND REPORTS

The *Code of Virginia* § [63.2-1503](#) (B) and (C) mandate that local departments maintain the capability to receive reports and complaints alleging abuse or neglect on a twenty-four-hour, seven day a week basis.

A. 24-Hour Hotline & Receiving Complaints and Reports

The Virginia Administrative Code provides that a person may make a report or complaint by telephoning the Department's toll-free Child Abuse and Neglect Hotline (1-800-552-7096) or by contacting a local department of social services.

22VAC40-705-40(H). To make a complaint or report of child abuse and/or neglect, a person may telephone the department's toll-free child abuse and neglect hotline or contact a local department of jurisdiction pursuant to § [63.2-1510](#) of the Code of Virginia.

The statewide toll-free CPS Hotline (1-800-552-7096) shall be available 24-hours-a-day, seven-days-a-week. After receiving a complaint or report of child abuse or neglect, the CPS State Hotline worker will refer the complaint or report to the local department immediately or no later than the next working day.

B. Persons Who May Make a Complaint or Report

The *Code of Virginia* §§ [63.2-1509](#) and [63.2-1510](#) provide the authority for persons to report suspected abuse or neglect and allow any person who suspects that a child is abused or neglected to make a complaint or report. The *Code of Virginia* § 63.2-1509 further identifies certain persons who are mandated to report suspected abuse or neglect. The Virginia Administrative Code defines complaint and report

22VAC40-705-10: "Complaint" means any information or allegation of child abuse and/or neglect made orally or in writing pursuant to § [63.2-1508](#) of the Code of Virginia.

22VAC40-705-10: "Report" means either a complaint as defined in this section or an official document on which information is given concerning abuse and neglect and which is required to be made by persons designated herein and by local departments in those situations in which a complaint from the general public reveals suspected child abuse and/or neglect pursuant to subdivision 5 of the definition of abused or neglected child in § [63.2-100](#) of the Code of Virginia.

PART III: COMPLAINTS AND REPORTS

1.0 Mandated Reporters

The Virginia Administrative Code defines mandated reporters and their reporting responsibilities:

22VAC40-807-10: "Mandated reporters" means those persons who are required to report suspicions of child abuse and/or neglect pursuant to § [63.2-1509](#) of the Code of Virginia.

22VAC40-705-40(A): Persons who are mandated to report are those individuals defined in § [63.2-1509](#) of the Code of Virginia.

- 1. Mandated reporters shall report immediately any suspected abuse or neglect that they learn of in their professional capacity.**
- 2. Mandated reporters shall disclose all information which is the basis for the suspicion of child abuse or neglect and shall make available, upon request, to the local department any records and reports which document the basis for the complaint and/or report.**
- 3. A mandated reporter's failure to report within 72 hours of the first suspicion of child abuse or neglect shall result in a fine.**

1.1 Who Are Mandated Reporters

The *Code of Virginia* identifies those persons who are mandated reporters. These persons must report suspected abuse or neglect that they suspect when in their professional or official capacity.

Code of Virginia § 63.2-1509(A) Effective July 1, 2008. The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department's toll-free child abuse and neglect hotline:

1. Any person licensed to practice medicine or any of the healing arts;
2. Any hospital resident or intern, and any person employed in the nursing profession;
3. Any person employed as a social worker;
4. Any probation officer;
5. Any teacher or other person employed in a public or private school, kindergarten or nursery school;
6. Any person providing full-time or part-time child care for pay on a regularly planned basis;
7. Any mental health professional;
8. Any law-enforcement officer *or animal control officer*;
9. Any mediator eligible to receive court referrals pursuant to § [8.01-576.8](#);
10. Any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment;
11. Any person associated with or employed by any private organization responsible for the care,

PART III: COMPLAINTS AND REPORTS

custody or control of children; and

12. Any person who is designated a court-appointed special advocate pursuant to Article 5 (§ [9.1-151](#) et seq.) of Chapter 1 of Title 9.1.

13. Any person over the age of 18 years, who has received training approved by the Department of Social Services for the purposes of recognizing and reporting child abuse and neglect. This subsection shall not apply to any regular minister, priest, rabbi, imam, or duly accredited practitioner of any religious organization or denomination usually referred to as a church as it relates to (i) information required by the doctrine of the religious organization or denomination to be kept in a confidential manner or (ii) information that would be subject to § [8.01-400](#) or [19.2-271.3](#) if offered as evidence in court.

14. Any person employed by a local department as defined in § [63.2-100](#) who determines eligibility for public assistance.

15. *Any emergency medical services personnel certified by the Board of Health pursuant to § [32.1-111.5](#), unless such personnel immediately reports the matter directly to the attending physician at the hospital to which the child is transported, who shall make such report forthwith.*

1.2 Mandated Reporter May Make Report to that Person's Supervisor

As provided in the *Code of Virginia* [§ 63.2-1509 \(A\)](#), certain specified mandated reporters may report allegations of abuse or neglect to that person's supervisor. The person's supervisor maintains the responsibility of immediately making the report to the Department or local department.

1.3 Mandated Reporter Must Disclose All Relevant Information Even if Not The Complainant

The *Code of Virginia* [§ 63.2-1509 \(A\)](#) specifies when a mandated reporter makes a report of suspected abuse or neglect, the reporter must disclose all the information that is the basis of the report to the local department. This includes any records or reports documenting the basis of the allegation.

All mandated reporters, even if they are not the complainant, shall cooperate with the local department and shall make related information, records and reports *about the child who is the subject of the report* available to the local department for the purpose of validating a CPS referral and for completing a CPS response unless such disclosure violates the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232(g)).

Provision of such information, records and reports by a health care provider shall not be prohibited by the *Code of Virginia* § [8.01-399](#).

PART III: COMPLAINTS AND REPORTS

Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure.

Although obtaining parental consent to obtain information is always preferable, consent is not required for the release of information for the purpose of validating a referral or completing an investigation or family assessment.

1.4 Failure by Mandated Reporter to Report Abuse or Neglect

According to the *Code of Virginia* [§ 63.2-1509 \(D\)](#), if a person required to report fails to do so, that person can be charged with a misdemeanor. If found guilty, the fine is up to \$500.00 for the first incident and between \$100.00 and \$1,000.00 for any subsequent incidents. If the local department becomes aware of an incident involving a mandated reporter who failed to report pursuant to the *Code of Virginia* [§§ 63.2-1509 \(A\) and 63.2-1509 \(B\)](#), the local department must report the incident to the local Commonwealth's Attorney.

1.5 Physicians Diagnosing Venereal Disease

Physicians who diagnose venereal disease in a child 12 years of age or under must make a CPS report to the local department. Physicians need not report cases of venereal disease when they reasonably believe that the infection was caused congenitally or by means other than sexual abuse. The *Code of Virginia* [§ 32.1-36 \(A\)](#) provides that practicing physicians and laboratory directors shall report patients' diseases as prescribed by the State Board of Medicine. See the *Code of Virginia* [§ 32.1-36 A and B](#).

2.0 Other Persons May Make a Report of Alleged Child Abuse or Neglect

22VAC40-705-40(B). Persons who may report child abuse and/or neglect include any individual who suspects that a child is being abused and/or neglected pursuant to § [63.2-1510](#) of the Code of Virginia.

Any individual suspecting that a child is abused or neglected may make a complaint to the Department or a local department. The person can make the complaint to the local department in the county or city where the alleged victim child resides or where the alleged abuse or neglect occurred. The person may also make the complaint by calling the CPS State Hotline (1-800-552-7096).

PART III: COMPLAINTS AND REPORTS

3.0 Complaints and Reports May be Made Anonymously

22VAC40-705-40(C). Complaints and reports of child abuse and/or neglect may be made anonymously. An anonymous complaint, standing alone, shall not meet the preponderance of evidence standard necessary to support a founded determination.

Reports or complaints alleging abuse or neglect may be made anonymously and the local department cannot require the individual to reveal his identity as a condition of accepting the report. All reports must be documented in the automated data system and evaluated for validity and a CPS response regardless of whether or not the caller is identified.

4.0 Issues Related to Reporting

4.1 Immunity from Liability for Persons Making a Report

22VAC40-705-40(D). Any person making a complaint and/or report of child abuse and/or neglect shall be immune from any civil or criminal liability in connection therewith, unless the court decides that such person acted in bad faith or with malicious intent pursuant to § [63.2-1512](#) of the Code of Virginia.

The following persons are immune from any civil or criminal liability unless it is proven that such person acts with malicious intent:

- a. Any person making a report or complaint of child abuse or neglect;
- b. Any person who participates in a judicial proceeding resulting from either making a report or taking a child into immediate custody.

4.2 Protecting the Identity of the Reporter or Complainant

22VAC40-705-40(E). When the identity of the reporter is known to the Department or local department, these agencies shall make every effort to protect the reporter's identity.

When the complainant is known to the department, every effort shall be made to protect that person's anonymity. However, the complainant must also be informed that his anonymity cannot be assured if the case is brought into court.

PART III: COMPLAINTS AND REPORTS

C. Actions Upon Receipt of Complaint or Report

1.0 Statutory Authorities and Responsibilities

The *Code of Virginia* § [63.2-1503](#) requires a local department to determine the validity of all reports and to decide whether to conduct a family assessment, if designated to do so, or an investigation, if the report or complaint alleging child abuse or neglect is valid.

2.0 Document Receipt of Complaint or Report in Automated Data System

Pursuant to the *Code of Virginia* [§63.2-1505\(B\)\(2\)](#) when a complaint or report alleging abuse or neglect is received, the local department must enter the report into the automated data system.

3.0 The Local Department Must Record All Complaints & Reports in Writing

22VAC40-705-50(A). All complaints and reports of suspected child abuse and/or neglect shall be recorded in the child abuse and neglect information system. A record of all reports and complaints made to a local department or to the Department, regardless of whether the report or complaint was found to be a valid complaint of abuse and/or neglect, shall be retained for one year from the date of the complaint.

All complaints or reports made to the Department or a local department must be documented in the information system. A person may make the initial complaint or report alleging abuse or neglect orally or in writing. The local department must document the report or complaint in the automated data system within three working days, regardless of whether the complaint or report is determined to be valid or invalid.

3.1 New Allegations in an Existing Family Assessment or Investigation

When a report has been accepted as valid and the investigation or family assessment response is initiated and subsequent allegations are made, the type of allegation and the time elapsed since the initial report will determine whether the new allegation is treated as a new report or assessed within the context of the existing response. If the allegations do not provide any new or different information, they may be added into the initial investigation or family assessment. If the additional allegations address new types of abuse/neglect and 14 or more days have elapsed since the first report, the additional allegations should be taken as a new report.

PART III: COMPLAINTS AND REPORTS

D. Determine Validity of Complaint or Report

When a local department receives a report or complaint of abuse or neglect, the local department must determine whether the complaint or report is valid within 14 days of receiving the complaint. Criteria are established for determining whether a complaint or report is valid. Each criterion must be satisfied before a complaint or report can be valid. Only valid reports or complaints of abuse or neglect shall receive a family assessment or an investigation. *It is important to make the validity decision as soon as possible after the report has been received so that the urgency of the response can be accurately determined.*

1.0 Definition of Valid Complaint or Report

The *Code of Virginia* [§ 63.2-1508](#) and the Virginia Administrative Code define a valid complaint.

22VAC40-705-50 (B). In all valid complaints or reports of child abuse and/or neglect the local department of social services shall determine whether to conduct an investigation or a family assessment. A valid complaint or report is one in which:

- 1. The alleged victim child or children are under the age of 18 at the time of the complaint and/or report;**
- 2. The alleged abuser is the alleged victim child's parent or other caretaker;**
- 3. The local department receiving the complaint or report is a local department of jurisdiction; and**
- 4. The circumstances described allege suspected child abuse and/or neglect.**

2.0 Determine Whether the Complaint or Report Is Valid

There are four criteria that must be addressed when determining whether the complaint or report is valid. Each question must be satisfied in order to have a valid report. The four elements are:

2.1 Question 1: Is the Alleged Victim Child Under Eighteen Years of Age?

22VAC40-705-50(B)(1). The alleged victim child or children are under the age of 18 at the time of the complaint and/or report.

PART III: COMPLAINTS AND REPORTS

The local department can only respond with a family assessment or an investigation to valid complaints or reports involving children under the age of eighteen at the time of the report or complaint.

If the alleged victim is over the age of eighteen, the local department should refer that person to the local attorney for the Commonwealth,

Adult Protective Services, or other appropriate services provided in the locality.

2.1.1 Emancipated Minor

If the alleged victim child is under the age of eighteen and has been legally emancipated, then the local department has the discretion of not completing a family assessment or investigating the complaint.

The local department may determine a report of abuse or neglect as invalid if a court has emancipated the alleged victim of the abuse or neglect pursuant to the *Code of Virginia* §§[16.1-331](#) and [16.1-332](#).

The *Code of Virginia* §§[16.1-331](#), [16.1-332](#) and [16.1-333](#) require petitioning the juvenile court and the court conducting a hearing before making a finding of emancipation. The local department must confirm that the child has been legally emancipated before invalidating the complaint or report.

2.1.2 Alleged Victim Child is Married

There is no specific *Code of Virginia* or Virginia Administrative Code provision prohibiting the validation of a complaint involving an alleged victim child who is married. When a local department receives a complaint involving a married child the first issue the local department may address is whether the alleged victim child is emancipated. If the alleged victim child is married and emancipated, then the local department should invalidate the complaint or report.

A husband or wife of the alleged victim cannot be considered a caretaker.

PART III: COMPLAINTS AND REPORTS

2.2 Question 2: Is the Alleged Abuser or Neglector a Caretaker?

22VAC40-705-50(B)(2). The alleged abuser is the alleged victim child's parent or other caretaker.

The second element of a valid complaint is whether the alleged abuser or neglecter is a caretaker. The Virginia Administrative Code defines caretaker as:

22VAC40-705-10: "Caretaker" means any individual having the responsibility of providing care for a child and includes the following: (i) parent or other person legally responsible for the child's care; (ii) any other person who has assumed caretaking responsibility by virtue of an agreement with the legally responsible person; (iii) persons responsible by virtue of their positions of conferred authority; and (iv) adult persons residing in the home with the child.

Inherent within the definition of a caretaker is that the individual was responsible for providing care and supervision for the child or assumed responsibility for providing care and supervision for the child. There are four categories of caretaker. Each category is divided into subcategories to assist in clarifying who may be a caretaker. Those categories and subcategories include but are not limited to:

- a. Parent or other person legally responsible for the child's care including:
 - (1) Natural parent
 - (2) Adoptive parent
 - (3) Stepparent
- b. Any other individual who has assumed caretaking responsibility by virtue of an agreement (whether formal or informal) with the legally responsible person including but not limited to:
 - (1) Relatives (including siblings under 18)
 - (2) Foster parents
 - (3) Babysitter
 - (4) Day care personnel
- c. Individuals responsible by virtue of their position of authority or position, including but not limited to:
 - (1) Teacher or other school personnel

PART III: COMPLAINTS AND REPORTS

- (2) Institutional staff
 - (3) Scout troop leaders
- d. When they are living in the home with the child, the following are assumed to be responsible for the child's care:
- (1) Grandparents,
 - (2) Other relatives age 18 or over,
 - (3) Paramour of parent, or
 - (4) Sibling age 18 or over

When determining whether a person is responsible for the care of a child, the CPS worker should consider the amount of authority for the care, control and discipline of the child delegated to the person acting as a caretaker. The CPS worker may consider these issues when determining whether a person is a caretaker.

- What is the person's relationship with the child?
- What is that person's role or function toward the child?
- Was the primary responsibility of the person toward the child one of supervision and providing care, or was the person providing a professional or expert service?
- How do the child and the child's usual caretaker view this relationship and role?
- How does the community view this relationship and role?
- Have the parents or other person specifically delegated formally or informally the caretaking role for this person?

The CPS worker may consider these issues when determining if a minor is a caretaker and alleged abuser or neglecter.

- Was it appropriate for the juvenile to have been put in a caretaking role? Was the supervision plan appropriate?
- Was the alleged abuse by the minor indicative of his/her own abuse? (i.e. sexual knowledge or behavior that is age inappropriate)
- What is the age difference between the alleged abuser and the victim; was this peer interaction?

Special consideration must be given to the needs of minor caretakers who are abusive. The report may be screened out or an unfounded investigation in relation to the minor as the abuser, because it is determined that the minor was inappropriately placed in a caretaking role by his parent or guardian. However, the behaviors of the minor may indicate a need for services. In these reports, the

PART III: COMPLAINTS AND REPORTS

CPS worker must notify law enforcement that a possible criminal act has occurred.

2.3 Question 3: Is Abuse or Neglect Alleged to Have Occurred?

22VAC40-705-50(B)(4). The circumstances described allege suspected child abuse and/or neglect.

The complaint or report must describe a type of abuse or neglect as defined in 22VAC40-705-30 and/or Part II: Definitions of Abuse and Neglect of this guidance manual.

2.3.1 General Factors to Consider When Determining if Abuse or Neglect Definition has Been Met

The CPS worker must consider the following questions to determine if the definition of physical abuse has been met.

- What was the action or inaction of the caretaker?
- Did the child sustain an injury or is there evidence establishing that the child was threatened with sustaining an injury?
- Does the evidence establish a nexus, or causal relationship between the action or inaction of the caretaker and the physical injury or threatened physical injury to the child?
- Was the injury, or threat of injury, caused by nonaccidental means?

2.3.2 Establish Injury or Threat of an Injury

The report or complaint must allege a threat of injury or actual injury to the child to satisfy the definition of abuse or neglect. The *Code of Virginia* and the Virginia Administrative Code do not require that the child sustain an actual injury.

2.3.3 Establish Nexus Between Caretaker's Actions or Inaction and the Injury or Threatened Injury to the Child

The complaint or report must allege a link between the actions or inaction of the caretaker, regardless of the caretaker's intent, and the injury to the child or the threat of injury to the child.

2.3.4 "Other Than Accidental Means"

PART III: COMPLAINTS AND REPORTS

The injury or threat of injury to the child must have occurred as a result of “other than accidental means.” The caretaker’s actions must be carefully considered when determining whether the injury or threat of injury sustained by the child was caused accidentally.

For example, the complaint alleged that the caretaker caused bruises and abrasions on the child’s ankles and wrists. The caretaker asserted that he did not intend to cause the injuries to the child; he intended to restrain the five year old boy with a rope. However, the evidence shows that the caretaker tied the child’s legs at the ankles and tied the wrists to a chair, and when the child jerked in several different directions for over 20 minutes to try to get loose, injuries occurred to these parts of the body. The caretaker did not accidentally tie the child and leave him for 20 minutes. Although the caretaker did not intend to cause the injuries to the child, the caretaker did intend to tie the child, and could reasonably expect this child would try to get loose. The caretaker’s act of restraining this child with a rope was intended and could have caused more serious harm. The result of the caretaker’s actions was not unforeseen or unexpected. Therefore, the injury was not accidental.

In the alternative, a black eye to the child’s face while playing catch with the caretaker would be considered accidental. The fact that the ball bounced off the child’s mitt and struck the child’s eye was not intended. In the first example, the caretaker intended to discipline his child by restraining with a rope for 20 minutes. The intended act of restraining the child caused the injury to the child. In the second example, the caretaker did not intend for the ball to bounce off the child’s mitt and hit the child’s face. The action causing the black eye was accidental.

2.3.5 Determine if Medical Neglect Definition Has Been Met

It is the parent’s responsibility to determine and obtain appropriate medical, mental and dental care for a child. What constitutes adequate medical treatment for a child cannot be determined in a vacuum free of external influences, but rather, each case must be decided on its own particular facts. The focus of the CPS response are whether the caretaker failed to provide medical treatment and whether the child was harmed or placed at risk of harm as a result of the failure. Cultural and religious child-rearing practices and beliefs that differ from general community standards should not be considered a basis for medical neglect, unless the practices present a specific danger to the physical or emotional safety of the child.

PART III: COMPLAINTS AND REPORTS

a. Treatment or Care Must Be Necessary

The statutory definition of medical neglect requires that the parent neglects or refuses to provide necessary care for the child's health. Therefore, the local department must establish that the caretaker's failure to follow through with a complete regimen of medical, mental or dental care for a child was necessary for the child's health. The result of the caretaker's failure to provide necessary care could be illness or developmental delays.

The challenging issue is determining when medical care is necessary for the child's health. Obviously, life-saving medical treatment is necessary and falls within the definition. However, when parents or caretakers refuse medical care that is important to their child's well being but is not essential to life, the issue becomes more complicated in determining whether the medical care is necessary.

b. Assess Degree of Harm (Real or Threatened) to the Child

When assessing whether the medical, mental or dental treatment is necessary for the child's health, the local department should consider the degree of harm the child suffered as a result of the lack of care. If the child has yet to suffer harm, then the local department should assess the likelihood that the child will suffer harm. The greater the harm, the more necessary the treatment.

In addition to harm, the local department should consider the type of medical, mental or dental condition involved and whether the condition is stable or progressive. Whether the condition is stable or progressive may be an issue in determining the severity of the condition and the necessity of treatment. If the condition of the child is stable, then the local department may consider deferring to the caretaker's authority. If the condition is progressive and left untreated, then the local department may give lesser deference to the caretaker's authority.

PART III: COMPLAINTS AND REPORTS

c. *Parent Refuses Treatment for Life-Threatening Condition*

Pursuant to the Code of Virginia [§ 63.2-100](#), under certain conditions a parent's decision to refuse a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care. Those conditions are:

- The decision is made jointly by the parents or other person legally responsible for the child and the child;*
- The child has reached 14 years of age and sufficiently mature to have an informed opinion on the subject of his medical treatment;*
- The parents or other person legally responsible for the child and the child have considered alternative treatment options; and*
- The parents or other person legally responsible for the child and the child believe in good faith that such decision is in the child's best interest.*

The Virginia Administrative Code provides definitions of some of the terms in the *Code of Virginia*.

22VAC40-705-10: Particular Medical Treatment means a process or procedure that is recommended by conventional medical providers and accepted by the conventional medical community.

Sufficiently mature is determined on a case-by-case basis and means that a child has no impairment of his cognitive ability and is of a maturity level capable of having intelligent views on the subject of his health condition and medical care.

Informed opinion means that the child has been informed and understands the benefits and risks, to the extent known, of the treatment recommended by conventional medical providers for his condition and the alternative treatment being considered as well as the basis of efficacy for each, or lack thereof.

Alternative treatment options means treatments used to prevent or treat illnesses or promote health and well-being outside the realm of modern conventional medicine.

PART III: COMPLAINTS AND REPORTS

Life-threatening condition means a condition that if left untreated more likely than not will result in death and for which the recommended medical treatments carry a probable chance of impairing the health of the individual or a risk of terminating the life of the individual.

d. Assess Caretaker's Rationale

The most singular underlying issue in determining whether a child is being deprived of adequate medical care, and therefore, a medically neglected child, is whether the parents have provided an acceptable course of medical treatment for their child in light of all the surrounding circumstances.

The local department should consider whether the caretaker's failure to provide necessary medical treatment was caused by ignorance or misunderstanding. The local department should consider whether the caretakers obtained accredited medical assistance and were aware of the seriousness of their child's affliction. The local department should weigh the possibility of a cure if a certain mode of treatment is undertaken and whether the caretakers provided their child with a treatment. The local department should consider whether the caretakers sought an alternative treatment recommended by their physician and have not totally rejected all responsible medical authority.

e. Assess Financial Capabilities & Poverty

The local department should consider whether the caretaker's failure to provide necessary medical treatment was caused by financial reasons or poverty. Parents or caretakers should not be considered neglectful for the failure to provide necessary medical treatment unless they are financially able to do so or were offered financial or other reasonable means to do so. In such situations, a founded disposition may be warranted if, after appropriate counseling and referral, the parents still fail to provide the necessary medical care.

2.3.6 Child Under Alternative Treatment

22VAC40-705-30(C)(1). A child who, in good faith, is under treatment solely by spiritual means through prayer in accordance with the tenets and

PART III: COMPLAINTS AND REPORTS

practices of a recognized church or religious denomination pursuant to [§63.2-100](#) of the Code of Virginia, shall not for that reason alone be considered a neglected child.

The *Code of Virginia* provides that no child shall be considered an abused or neglected child only for the reason that the child is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination. The religious exemption to a founded disposition of child abuse or neglect mirrors the statute providing a religious defense to criminal child abuse and neglect.¹ This exemption means that a founded disposition cannot be based only upon the religious practices of the parents or caretakers. A founded disposition can be rendered for other reasons. For example, if the parent caused the injury in the first place, the religious exemption would not apply. The religious exemption to a founded disposition of abuse or neglect is designed to protect a family's right to freedom of religion. The religious exemption statute is not to provide a shield for a person to abuse or neglect a child.²

Should there be question concerning whether a child is under the treatment in accordance with a tenet or practice of a recognized church or religious denomination, the local department should seek the court's assistance. The court should decide whether the parent or caretaker is adhering to religious beliefs as the basis for refusal of medical or dental treatment.

2.3.7 Medical Neglect of Infants with Life-Threatening Conditions

The Virginia Administrative Code 22VAC40-705-30(C) states that medical neglect includes withholding of medically indicated treatment. The definition section of 22VAC40-705-10 et seq. defines withholding of medically indicated treatment as specific to infants. When conducting an investigation involving an infant

1 See: Va. Code § [18.2-371.1\(C\)](#). Any parent, guardian or other person having care, custody, or control of a minor child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall not, for that reason alone, be considered in violation of this section.

2 The United States Supreme Court held in 1944 that "parents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they can reach the age of full and legal discretion when they can make that choice for themselves." *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944).

PART III: COMPLAINTS AND REPORTS

deprived of necessary medical treatment or care, the local department must be aware of the ancillary definitions and guidance requirements.

22VAC40-705-10. “Withholding of medically indicated treatment” means the failure to respond to the infant’s life-threatening condition by providing treatment (including appropriate nutrition, hydration, and medication) which in the treating physician’s or physicians’ reasonable medical judgment will be most likely to be effective in ameliorating or correcting all such conditions.

This definition applies to situations where parents do not attempt to get a diagnosis even when the child's symptoms are severe and observable.

a. Withholding of Medically Indicated Treatment When Treatment is Futile

22VAC40-705-30(C)(2): For the purposes of this regulation, “withholding of medically indicated treatment” does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when in the treating physician’s or physicians’ reasonable medical judgment:

- a. The infant is chronically and irreversibly comatose;**
- b. The infant has a terminal condition and the provision of such treatment would:**
 - (1) Merely prolong dying;**
 - (2) Not be effective in ameliorating or correcting all of the infant’s life-threatening conditions; or**
 - (3) Otherwise be futile in terms of the survival of the infant; or**
 - (4) The infant has a terminal condition and the provision of such treatment would be virtually futile in terms of the**

PART III: COMPLAINTS AND REPORTS

survival of the infant and the treatment itself under such circumstances would be inhumane.

b. Definitions of Chronically and Irreversibly Comatose & Terminal Condition

22VAC40-705-10: “Chronically and irreversibly comatose” means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner other than reflexive activity of muscles and nerves for low-level conditioned response and from which to a reasonable degree of medical probability there can be no recovery.

22VAC40-705-10: “Terminal condition” means a condition caused by injury, disease or illness from which to a reasonable degree of medical probability a patient cannot recover and (i) the patient’s death is imminent or (ii) the patient is chronically and irreversibly comatose.

2.4 Question 4: Does the Local Department Have Jurisdiction to Conduct the Family Assessment or Investigation?

The *Code of Virginia* [§63.2-1503\(A\)](#) provides local departments with the jurisdictional authority to conduct investigations of reports or complaints alleging child abuse and neglect. Jurisdiction determines which local department has primary responsibility for responding to a valid complaint or report of abuse or neglect. The Virginia Administrative Code addresses the issue of jurisdiction:

22VAC40-705-50(B)(3). The local department receiving the complaint or report is a local department of jurisdiction.

The Virginia Administrative Code further defines jurisdiction as:

22VAC40-705-10: "Local department of jurisdiction" means the local department in the city or county in Virginia where the

PART III: COMPLAINTS AND REPORTS

alleged victim child resides or in which the alleged abuse and/or neglect is believed to have occurred. If neither of these is known, then the local department of jurisdiction shall be the local department in the county or city where the abuse and/or neglect was discovered.

The local department that first receives a report must ensure that the complaint or report is either determined valid and therefore conducts a family assessment or investigation or the agency receiving the report determines which is the appropriate agency of jurisdiction and transfers the information to that agency immediately, first placing a call of notification to the receiving agency. In determining jurisdiction, the local department receiving the complaint or report alleging abuse or neglect is the local department in the county or city where:

- a. The alleged victim child resides, or
- b. The alleged abuse or neglect is believed to have occurred, or
- c. If neither a nor b is known, where the alleged abuse/neglect was discovered.

2.4.1 Lack of Jurisdiction Not Sufficient to Invalidate Complaint or Report

If a local department receives a complaint or report alleging abuse or neglect and the complaint is invalid solely because the local department lacks jurisdiction, then the local department must transfer the complaint or report to the local department with proper jurisdiction. If the complaint or report belongs out of state, then the local department must make a referral to the appropriate agency in the other state.

2.4.2 The Local Department First Receiving the Complaint or Report Must Ensure Complaint or Report, if Valid, Receives a Response

22VAC40-705-40(H)(1). The local department of jurisdiction that first receives a complaint or report of child abuse and/or neglect shall assume responsibility to

PART III: COMPLAINTS AND REPORTS

ensure that a family assessment or an investigation is conducted.

The Virginia Administrative Code specifically places responsibility on the local department who first receives the complaint or report alleging abuse or neglect to ensure that a family assessment or investigation is conducted if the complaint or report is valid. The purpose of this section is to ensure that a valid report or complaint does not go uninvestigated because of a question of jurisdiction.

2.4.3 Transfer Jurisdiction of Complaint to Another Local Department

22VAC40-705-40(H)(1) requires the local department of jurisdiction first receiving a valid complaint to ensure that the complaint receives a family assessment or investigation. The local department first receiving the complaint must forward all information related to the complaint. The local department first receiving the complaint must also ensure that the other local department is going to conduct a family assessment or an investigation. The local department transferring the report to another local department must document the transfer in the automated data system.

2.4.4 Responsibilities of Local Department Receiving the Complaint

The local department, to whom the report is being transferred, should inform the original local department that they will or will not conduct the family assessment or investigation. If a local department refuses, that local department must immediately inform the requesting local department and document the reasons why the local department cannot assume primary responsibility for the family assessment or investigation. If the local departments cannot agree as to who should assume the primary responsibility, then a CPS regional program consultant should be contacted immediately. Regardless, the responsibility for ensuring a response remains with the local department that first receives the valid complaint.

2.4.5 Assistance Between Local Departments of Jurisdiction

22VAC40-705-40(H)(2). A local department may ask another local department which is a local department of

PART III: COMPLAINTS AND REPORTS

jurisdiction to assist in conducting the family assessment or investigation. If assistance is requested, the local department shall comply.

A local department may ask another local department of jurisdiction to assist in conducting the CPS family assessment or investigation. Assistance must be provided upon request. Assistance may include conducting courtesy interviews of the alleged victim child, the alleged victim child's parents or other caretakers, and the alleged abuser or neglecter. Assistance may also include arranging for appointments,

scheduling meetings, counseling sessions, or any other professional contacts and services for the alleged victim child and siblings, the child's parents or other caretakers, or alleged abuser or neglecter.

a. When a Party Relocates Outside of the Investigating Local Department's Jurisdiction

The *Code of Virginia* [§63.2-1503\(H\)](#) specifically addresses the circumstances when a party to a report or complaint of abuse or neglect relocates outside of the jurisdiction of the investigating local department.

When the alleged victim child, and/or the child's parents or other caretakers who are the subject of the family assessment or investigation relocate out of the jurisdiction of the local department responsible for the family assessment or investigation, the local department of jurisdiction must notify the Child Protective Services Unit of the local department where the parties relocated, whether inside or outside of Virginia. The local department of jurisdiction may seek assistance from the other local department in completing the investigation. The notified local department shall respond to the receiving local department's request for assistance in completing the family assessment or investigation. Any local department in Virginia so requested must comply.

b. Local Departments Shall Share Relevant Case Record Information

When one local department requests another local department to assist in completing a family assessment or an

PART III: COMPLAINTS AND REPORTS

investigation or providing services, the requesting local department shall contact the receiving local department by telephone before transferring the record within the child abuse and neglect information system. The receiving local department shall then arrange protective and rehabilitative services as needed or appropriate, and assist in a timely completion of the investigation. All written notification and letters (i.e., disposition letters and notification of appeal rights) remain the responsibility of the original local department of jurisdiction conducting the family assessment or investigation. The local department of jurisdiction shall continue to retain case materials not entered into the automated data system and provide the receiving department with relevant portions of the case record necessary to provide services or to complete the investigation or family assessment

c. Cooperative Agreements Between Local Departments

22VAC40-705-40(H)(3). A local department may ask another local department through a cooperative agreement to assist in conducting the family assessment or investigation.

A local department may request assistance from a local department that is not a primary local department of jurisdiction. When one local department requests assistance from a neighboring locality in completing a family assessment or an investigation, both local departments shall develop a cooperative agreement in which the specific request, parameters, follow-up requirements and related topics are addressed.

2.4.6 The Appearance of a Conflict of Interest

Family assessments or investigations involving recognized figures, local or county officials, former employees, and other persons who are well known within the community may raise the appearance of a conflict of interest for a local department. In order to assure that the response to such cases is and appears to be impartial, the local department of jurisdiction may contact a neighboring locality and develop the appropriate guidelines for completion of the family assessment or investigation. The local departments must develop a cooperative agreement to ensure that the

PART III: COMPLAINTS AND REPORTS

report receives an appropriate response. When considering transferring a report or complaint of child abuse or neglect because of the appearance of a conflict of interest, the local department may seek guidance from the CPS regional specialist.

2.4.7 Family Assessments or Investigations Involving Employees of Local Departments

The *Code of Virginia* [§ 63.2-1509](#) provides the juvenile and domestic relations district court the authority to determine jurisdiction of the investigation if the alleged abuser or neglector is an employee of the local department where the report or complaint was received. The purpose of this statute is to ensure a fair investigation and preserve impartiality.

The Virginia Administrative Code states:

22VAC40-705-40(H)(4). If a local department employee is suspected of abusing and/or neglecting a child, the complaint or report of child abuse and/or neglect shall be made to the juvenile and domestic relations district court of the county or city where the alleged abuse and/or neglect was discovered. The judge may assign the report ... pursuant to §§[63.2-1509](#) and [63.2-1510](#) of the Code of Virginia.

a. Jurisdiction: Assignment of Investigation by Court to Local Department

If a local department of social services is assigned a report by the Court, the family assessment or investigation should be conducted like any other.

2.4.8 Local Department Cannot Assume Jurisdiction if Abuse or Neglect Occurred in Another State and the Alleged Abuser Does not Reside in Virginia

A local department shall not assume jurisdiction of an investigation or family assessment if the alleged abuse or neglect occurred in another state and the alleged abuser does not reside in Virginia, even if the alleged victim resides in Virginia at the time of the report. A local department should report the suspected abuse or neglect to child protective services in the state where the abuse or neglect occurred. If the other state requests assistance in conducting the investigation or family assessment, the local

PART III: COMPLAINTS AND REPORTS

department should comply. If services are needed for the child or family, the local department may open the case for services.

a. Transfer Jurisdiction of Investigation to Another State

If appropriate, the local department may request the other state to assume jurisdiction of the investigation. If the other state agrees to assume jurisdiction of the investigation, the local department should provide all information relevant to the investigation to the other state. The following information should be provided when making a referral:

- a. The name, date of birth, and sex of child;
- b. Any other name by which the child may be known;
- c. The names of parent and/or guardian;
- d. Any other names by which the parent and/or guardian may be known;
- e. The current address including any directions;
- f. Last known address;
- g. Statement of why the referral is being made;
- h. Brief social history of the child and the family;
- i. A brief description of the local department's involvement with the family.

If the other state refuses to accept jurisdiction, then the local department must determine whether sufficient resources are available to conduct a thorough family assessment or investigation. The local department may not be able to gather sufficient evidence to make a determination of whether the abuse or neglect occurred. The local department must clearly document in the record if the local department is unable to conduct the family assessment or investigation or unable to gather sufficient evidence to make a determination. The automated data system should be notified that the local department was unable to complete the response.

PART III: COMPLAINTS AND REPORTS

3.0 Invalid Report or Complaint

22VAC40-705-50(C). The local department shall not conduct a family assessment or investigate complaints or reports of child abuse and/or neglect that fail to meet all of the criteria in subsection B of this section.

Each of the four criteria outlined in 22VAC40-705-50(B) must be satisfied in order to achieve a valid complaint of abuse or neglect requiring a family assessment or an investigation. If the complaint or report of abuse or neglect fails to meet any one of the criteria, then the complaint or report is not valid and the local department has no authority to conduct a CPS family assessment or an investigation.

3.1 Additional Information for Screening Reports of Abuse/Neglect Regarding Public School Personnel

See Part V, Out of Family Investigations, in this guidance chapter. The *Code of Virginia* [§ 63.2-1511](#) states that “reasonable and necessary” force should be taken into account in determining validity of reports of abuse or neglect by public school employees.

4.0 Required Notifications if Report or Complaint is Invalid

4.1 Notify Complainant

If a report is determined to be invalid, the local department must inform the complainant of its lack of authority to take action.

4.1.1 Invalid Complaint Involving Child Care Facility

If a report is not valid because it addresses general substandard conditions in a child care facility (such as quality of food or program issues in a day care setting or residential facility), but the conditions do not constitute abuse or neglect, the local department (or CPS State Hotline staff if receiving the call) shall identify the proper regulatory authority and refer the caller to that regulatory authority. If there is no regulatory authority and no valid complaint for CPS investigation, the caller shall be informed that there is no agency with the authority to intervene.

PART III: COMPLAINTS AND REPORTS

4.1.2 Non-Caretaker Sexual Abuse: Information to be Provided to Reporter or Complainant

The intake worker should explain the following to the person making the report or complaint alleging the non-caretaker sexual abuse of a child:

- a. The local department is not the agency authorized to investigate the report.
- b. The local department is required to report this information directly to law enforcement.

4.2 Notify Law Enforcement of Non-Caretaker Sexual Abuse

If a report is not valid because it alleges child sexual abuse perpetrated by a person who is not in a caretaker role, the local department (or CPS State Hotline staff if receiving the call) is required to report the allegation to the local law enforcement agency. The worker should telephone the information to law enforcement in the jurisdiction where the abuse occurred in accordance with any local protocol or standard procedures for reporting sex offenses involving juvenile victims. If there is any reason to believe a child may be in danger, the report must be made immediately. In all other cases, the report must be made on the same day it is received. Additional procedures may be developed locally to ensure effective reporting and accountability.

4.2.1 Information to be Provided to Law Enforcement in Non-Caretaker Sexual Abuse

The intake worker should attempt to obtain as much information about the alleged sexual abuse as possible and forward that information to the local law enforcement agency. The intake worker should attempt to obtain the following information: the identity of the child and the identity of the alleged perpetrator (name, birth date, sex, address, child's school); brief description of the alleged abuse.

E. Certain Complaints and Reports Must Be Reported to the Commonwealth Attorney and Others

1.0 Report Certain Cases of Suspected Child Abuse or Neglect

22VAC40-705-50(D): The local department shall report certain cases of suspected child abuse or neglect to the local attorney for the

PART III: COMPLAINTS AND REPORTS

Commonwealth and the local law-enforcement agency pursuant to §63.2-1503 D of the Code of Virginia.

The following complaints and reports must be reported to the Commonwealth Attorney and others as noted.

1.1 The Death of a Child

Any report or complaint alleging the death of a child as a result of abuse or neglect must be immediately reported to the attorney for the Commonwealth and the local law-enforcement agency.

1.2 An Injury or Threatened Injury to a Child Involving a Felony or Class I Misdemeanor

A report or complaint involving an injury (actual or threatened) that may have occurred as the result of a commission of a felony or a class 1 misdemeanor must be immediately reported to the attorney for the Commonwealth and the local law-enforcement agency. Felony offenses are punishable with death or confinement in a state correctional facility; all other offenses are misdemeanors.³

Felonies are classified, for the purposes of punishment and sentencing, into six classes; misdemeanors are classified into four classes.⁴

1.3 Any Sexual Abuse, Suspected Sexual Abuse or Other Sexual Offense Involving a Child

Any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in the *Code of Virginia* [§18.2-374.1](#) et seq must be reported to the Commonwealth Attorney's office and local law-enforcement.

1.4 Any Abduction of a Child

Any time a report or complaint alleges the abduction of a child, the local department must make a report to the Commonwealth Attorney's Office and to law-enforcement.

³ Va. Code § 18.2-8.

⁴ Va. Code § 18.2-9.

PART III: COMPLAINTS AND REPORTS

1.5 Any Felony or Class 1 Misdemeanor Drug Offense Involving a Child

Any time a report or complaint alleges abuse or neglect of a child and the commission of a felony or a class 1 misdemeanor drug offense, the local department must notify the Commonwealth's Attorney office and law-enforcement.

1.6 Contributing to the Delinquency of a Minor

Contributing to the delinquency of a minor in violation of the *Code of Virginia* [§18.2-371](#) must be reported to the Commonwealth's Attorney office and local law-enforcement.⁵

1.7 Information to be Provided to Commonwealth's Attorney and Law-Enforcement Agency

When making a report to the local Commonwealth's Attorney and local law enforcement, the local department must make available all of the information upon which the report is based, including records of any complaint of abuse or neglect involving the victim or the alleged perpetrator.

1.8 Other Criminal Acts Related to Child Abuse or Neglect

Other felonies and misdemeanors, not specifically identified for reporting by the *Code of Virginia*, may be related to child abuse or neglect. The reporting of these offenses must be in accordance with guidance developed by the local department in conjunction with the community's law enforcement and judicial officials.

2.0 Report the Death of a Child

22VAC40-705-50(F). The local department shall report to the following when the death of a child is involved . . .

The Virginia Administrative Code requires local departments to contact the Medical Examiner, Commonwealth's Attorney, local law enforcement and the CPS

⁵ Va. Code § 18.2-371 defines contributing to the delinquency of a minor as:

Any person eighteen years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition which renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in §16.1-228, or (ii) engages in consensual sexual intercourse with a child fifteen or older not his spouse, child, or grandchild, shall be guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting §§18.2-18, 18.2-19, 18.2-61, 18.2-63, 18.2-66, and 18.2-347.

PART III: COMPLAINTS AND REPORTS

Regional Specialist when a report or complaint alleging abuse or neglect involves the death of a child.

See Part XI, Child Deaths for additional requirements and guidance related to a report of a child death due to suspected abuse or neglect.

3.0 Memoranda of Understanding with Law Enforcement and Commonwealth's Attorney

The *Code of Virginia* [§63.2-1503\(J\)](#) and the Virginia Administrative Code state:

22VAC40-705-50(E)... local departments shall develop, where practical, memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the local office of the commonwealth's attorney.

Since many situations are required to be reported to local law enforcement and/or the Commonwealth's Attorney, children and families will be better served if there is an understanding between these organizations and the local department of social services. It is recommended that these agencies develop a written agreement regarding how varied situations will be handled, how communications should flow, etc. Provisions for roles and responsibilities of all parties, cross-training of staff, updating the agreement, and resolving problems are other examples of what the agreement should include in order for it to be an effective and continuous agreement among these agencies that are so vital to the protection of children.

F. Screen Valid Complaints and Reports for Priority

The local department must consider and analyze all the information collected at the time of the referral to determine the most appropriate response to initiate a family assessment or investigation based on the child's immediate safety or other factors. There are 3 Response Levels:

Response 1 (R1): as soon as possible within 24 hours of the date of the referral
Response 2 (R2) as soon as possible within 48 hours of the date of the referral
Response 3 (R3) as soon as possible within five working days of the date of the referral

The local department will initiate most family assessments or investigations with face to face contact with the victim child in order to conduct an initial safety assessment. Sometimes, the local department's initial efforts to respond to the report will not be successful such as when no one is home. In other situations, the local department's first contact although not with the victim child does provide information to assess child safety.

PART III: COMPLAINTS AND REPORTS

Sometimes, the initial response may be by telephone with the victim, the parent or a collateral that provides information to begin the family assessment or investigation and contributes to the initial child safety assessment.

All contacts in the family assessment and investigation must be entered into the automated data system to document the local department's response to the report and to document compliance with CPS program requirements. This includes documentation of all attempted contacts as well as case planning that affect the initiation of the family assessment or investigation.

~~The response priority decision is guided by the severity of the report and the urgency for response. Local departments shall consider all available information to determine the response priority level for all validated referrals. Information gathered by agency staff must be analyzed to assess the urgency for response. Each of the three response levels includes a time frame for the local department to initiate the valid investigation or family assessment: after the report has been accepted as valid:~~

~~Response 1 (R1): as soon as possible within 24 hours~~

~~Response 2 (R2): as soon as possible within 48 hours~~

~~Response 3 (R3): as soon as possible within five working days~~

~~The Virginia Administrative Code provides the regulatory framework to screen complaints and reports for priority:~~

22VAC40-705-50(G): Valid complaints or reports shall be screened for high priority based on the following:

- 1. The immediate danger to the child;**
- 2. The severity of the type of abuse or neglect alleged;**
- 3. The age of the child;**
- 4. The circumstances surrounding the alleged abuse or neglect;**
- 5. The physical and mental condition of the child; and**
- 6. Reports made by mandated reporters.**

The Appendix contains additional guidance to help determine the appropriate response priority for CPS reports.

1.0 The Immediate Danger to the Child

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- a. Is the child in current distress, injured, or otherwise in an unsafe environment?

PART III: COMPLAINTS AND REPORTS

- b. What plans do the caretakers have for the future or continued protection of the child?
- c. Do the caretakers view the circumstances of the child as threatening?
- d. Has the abuse or neglect diminished or stopped, or is the child thought to be at risk of continued abuse or neglect?

2.0 The Severity of the Type of Abuse or Neglect Alleged

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- a. Are there allegations or evidence of broken bones, fractures, cuts, broken skin, severe bruising or serious maltreatment?
- b. What was the manner of infliction of the abuse or neglect?
- c. Were instruments or other items, such as guns, knives or belts, used in the infliction of the abuse or neglect?
- d. Is the neglect or abuse of a continuing or chronic nature? Is there evidence establishing a pattern of abusive or neglectful behavior?
- e. Is the threat of abuse or neglect imminent?
- f. Can the caretaker be located? Is the caretaker not available?
- g. Is it likely that the precipitating event or one similar will reoccur?
- h. Are factors in the environment (both in and outside the home) observed to have an impact on the actual or potential abuse or neglect of the child?

3.0 The Age or Vulnerability of the Child

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- a. Does the child's age, sex, developmental level, chronological age, or maturation level effect the child's vulnerability to abuse or neglect?

PART III: COMPLAINTS AND REPORTS

- b. What is the child's capacity to protect him or herself from future abuse or neglect?
- c. Does the child know of emergency plans or contacts to obtain safety from abuse?
- d. Is the child able to express thoughts or responses regarding the allegation of abuse or neglect?

4.0 The Circumstances Surrounding the Alleged Abuse or Neglect

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- a. When did the abuse or neglect occur?
- b. Where did the abuse or neglect occur?
- c. Were other individuals aware or witness to the circumstances of the abuse or neglect?
- c. Are siblings of the victim child aware or witness to the abuse or neglect?
- d. Did the abuse or neglect occur during a punishment or instructional contact with the child?
- e. What is the likelihood that the circumstances leading to the abuse or neglect will reoccur?

5.0 The Physical and Mental Condition of the Child

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- a. Is the child thought to be of normal development and possess the ability to communicate during the investigation?
- b. Are there known illnesses, developmental delays, or other impediments to normal growth and development of the victim child?

PART III: COMPLAINTS AND REPORTS

- c. Are the child's responses and feelings known regarding the incident of abuse or neglect?
- d. Are these responses and feelings consistent or inconsistent with what would be expected in the circumstances of abuse?
- e. How does the child view his or her role in the abusive or neglectful situation?
- f. Does the child's perception of his role impact his or her vulnerability for abuse or neglect?

6.0 Complaints Made by Mandated Reporters

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- a. When was the mandated reporter made aware of the circumstances involving the alleged abuse or neglect?
- b. In what capacity did the mandated reporter know the alleged victim child? What was the relationship between the alleged victim child and the mandated reporter?
- c. Has the reporter made a similar report on like circumstances regarding this victim child prior to this complaint?
- d. Has the mandated reporter discussed the circumstances with the child? With the parents? Other professionals?
- e. Does the mandated reporter possess other relevant information such as knowledge about the living conditions or other environmental factors?
- f. What actions or services are recommended by the mandated reporter?

G. Determine the Appropriate CPS Response: Family Assessment or Investigation

The *Code of Virginia* [§63.2-1503 \(I\)](#) authorizes the local department to determine validity of a complaint or report. For all valid complaints or reports, the local department will determine whether to conduct a family assessment or an investigation.

PART III: COMPLAINTS AND REPORTS

22VAC40-705-50H. The local department shall initiate an immediate response. The response shall be a family assessment or an investigation. Any valid report may be investigated, but in accordance with 63.2-1506(C) of the Code of Virginia, the following shall be investigated: (i) sexual abuse, (ii) child fatality, (iii) abuse or neglect resulting in a serious injury as defined in §18.2-371.1, (iv) child has been taken into the custody of the local department of social services, or (v) cases involving a caretaker at a state-licensed child day care center, religiously exempt child day center, regulated family day home, private or public school, or hospital or any institution.

1.0 Make the Response Track Decision

After the decisions regarding validity and urgency, a decision must be made as to whether to conduct a family assessment or an investigation. The Virginia Administrative Code defines family assessment and investigation as follows:

22VAC40-705-10: "Family assessment" means the collection of information necessary to determine:

- a. The immediate safety needs of the child;**
- b. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;**
- c. Risk of future harm to the child; and**
- d. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services. These arrangements may be made in consultation with the caretaker(s) of the child.**

"Investigation" means the collection of information to determine:

- 1. The immediate safety needs of the child;**
- 2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect; Risk of future harm to the child;**
- 3. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;**
- 4. Whether or not abuse or neglect has occurred;**
- 5. If abuse or neglect has occurred, who abused or neglected the child; and**
- 6. A finding of either founded or unfounded based on the facts collected during the investigation.**

PART III: COMPLAINTS AND REPORTS

The answers to the questions regarding screening the complaint are relevant to making a track assignment. The immediate danger to the child and the severity of the alleged abuse or neglect are crucial factors to be considered.

The track decision should be made at Intake, before responding, if at all possible. In making this decision, the Intake Worker and/or Supervisor should take into consideration such variables as:

- history of abuse or neglect;
- *consider using the investigation response if there are more than three valid CPS reports in one year;*
- type and severity of alleged abuse;
- child's age and ability to self-protect;
- presence of a disability that affects the child's ability to self-protect;
- whether or not the caretaker's behavior is violent or out of control;
- living conditions, e.g. hazardous, presence of firearms or drugs.

If sufficient information cannot be obtained from the complainant, the track assignment can be made at the point of the first meaningful contact with any parties named in the complaint. Additional local criteria for track assignment may be developed, but the criteria must be consistently applied within the locality.